

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Eighteenth Region

EXTENDICARE HEALTH FACILITIES, INC.,  
d/b/a GALTIER HEALTH CENTER

Employer

and

UNITED FOOD AND COMMERCIAL WORKERS  
UNION, LOCAL 789, AFL-CIO

Petitioner

Case 18-RC-16474

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.<sup>1</sup>

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>2</sup>

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<sup>1</sup> The names of the Employer and the Petitioner appear as amended at the hearing.

<sup>2</sup> The Employer, Extendicare Health Facilities, Inc., d/b/a Galtier Health Center, a Delaware corporation with an office and place of business located in St. Paul, Minnesota, operates a skilled nursing facility for the aged and infirm. During the past calendar year, a representative period, the Employer purchased and received at its St. Paul, Minnesota facility goods and services valued in excess of \$50,000 directly from suppliers located outside of Minnesota. During the same period, the Employer derived gross revenues in excess of \$1 million.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner has represented a unit consisting of the Employer's service and maintenance employees since about 1992. The Petitioner now seeks to represent an additional unit consisting of all full-time and regular part-time registered nurses and licensed practical nurses. Specific job classifications included within the unit petitioned for are staff (or unit or charge) nurses, evening and night coordinators, and mds coordinator. The parties agree that the director of nursing, the assistant director of nursing, the staff development coordinator, the nurse managers and assistant nurse manager are supervisors within the meaning of the Act and should be excluded from any unit found appropriate herein. The Employer, contrary to the Petitioner, contends that all of the remaining registered and licensed practical nurses (with the exception of the mds coordinator) are likewise supervisors within the meaning of the Act; and that the mds coordinator is a managerial employee and does not otherwise share a community of interest with other employees in the unit petitioned for.

The Employer operates a skilled nursing facility located in St. Paul, Minnesota. The facility is licensed for 125 beds, including 61 that are Medicare certified. The facility has five floors. The sub-level contains mechanical equipment and space for various other uses. The first floor has 13 beds. There are also offices and a dining area on that floor. The second, third and fourth floors are configured similarly. Each floor has 36 beds, a nurses station, a nurse manager office and an activities room for activities and meals. The third floor also contains an office for the mds coordinator.

An administrator has overall responsibility for the Employer's facility. Various department heads report to the administrator. The department heads typically work day-shift hours from Monday through Friday.

The director of nursing has overall responsibility for the nursing department. She is the only person within the nursing department who is salaried. The assistant director of nursing, the staff development coordinator, three nurse managers and one assistant nurse manager report to the director of nursing. All of these individuals generally work day-shift hours from Monday through Friday. In addition, the assistant director of nursing, the nurse managers, the assistant nurse manager and the evening and night coordinators work on a rotating basis on weekends. They are not assigned to provide care for specific residents. Like the director of nursing, the assistant director of nursing has overall responsibility for patient care. The assistant director of nursing is also responsible for following up on incident reports, assisting with Medicare issues and providing quality reports to the Employer's headquarters. The staff development coordinator is responsible for orientation, in-service training and infection control, and is head of the Employer's safety committee. Two of the nurse managers are assigned to a specific floor, and the third has responsibility for two floors. The nurse managers have 24-hour responsibility for patient care on their respective floors. This responsibility includes admissions and discharges, ensuring that proper care is given and assisting the mds coordinator in completing government-mandated paperwork. The assistant nurse manager assists the nurse manager on the fourth floor, and assists all of the nurse managers with respect to such matters as supplies and medications.

There is an evening coordinator and a night coordinator. The coordinators are the highest representatives of management on duty during the evening and night shifts. They are responsible for the entire building when they are on duty, and employees in all departments

report to the coordinators during the evening and night shifts. However, either the director of nursing or the assistant director of nursing is always available by telephone. In addition, the nurse managers are also available by telephone concerning issues that arise on their respective floors. If an employee is going to be absent for an assigned evening or night shift, the employee notifies the evening or night coordinator or their substitutes. The evening and night coordinators are responsible for finding a replacement for an absent employee. They can delegate that authority to a staff nurse. The coordinators have the authority to call an off-duty employee and request that they come in to work. In doing so, the coordinators use a staffing book that contains a list of employee names and telephone numbers. The coordinators also have the authority to reassign an employee who was scheduled to work as a “floater”; to ask an on-duty employee to work late; and to decide to work “short” for the shift. The coordinators and their substitutes do not need prior approval to call in an off-duty employee where this will result in overtime pay. The coordinators also have the authority to permit an employee to leave work early. The coordinators and their substitutes are paid at a higher rate than other nurses.

The evening coordinator works Monday through Friday from 2:30 to 11:00 p.m. As noted above, the evening coordinator is part of the weekend rotation. A nurse manager or staff nurse works as the evening coordinator on weekends. The evening coordinator’s responsibilities include overseeing patient care, staffing and staff interaction, and admissions. The evening coordinator does not have patient care duties when the facility is fully staffed but does assist other nurses in performing their duties. However, the facility is fully staffed only about 50 percent of the time.

The night coordinator works from 11:00 p.m. to 7:00 a.m. An on-call nurse regularly substitutes for the night coordinator. Another staff nurse may also be assigned to do so. The

night coordinator has patient care duties and spends 90 percent of the shift performing those duties.

The mds coordinator reports to the director of nursing. No employees report to the mds coordinator. By law, the mds coordinator must be a registered nurse. The mds coordinator is responsible for completing government-mandated “minimum data sets” for residents on a periodic basis and, together with a nurse manager, for preparing and updating patient care plans. The director of nursing testified that the mds coordinator’s duties are interdisciplinary in nature and include social services, dietary, recreation and nursing functions. Approximately 90 percent of her time is spent working in an office and the balance is spent gathering information from resident charts on the various floors of the facility. The mds coordinator does not have direct patient care responsibilities. Data concerning each resident must be gathered and submitted to the Federal government in order for the residents to be eligible for Medicare funds. The mds coordinator attends daily department head meetings.

The staffing coordinator is not a nurse but reports to the director of nursing. The staffing coordinator works day-shift hours during the week, and prepares schedules for both skilled and unskilled employees in the nursing department. The schedule includes the days, hours and floors that nursing department employees work. Certified nursing assistants (CNA’s) work on a rotating basis. The nurse managers determine the rotation. If an employee is going to miss an assigned day shift, the employee contacts the scheduling coordinator.

The Employer employs an additional registered nurse and approximately 19 registered nurses who are referred to interchangeably as staff, unit and charge nurses. These individuals report to the nurse managers. The staff nurse job description provides in part that they have the authority to assign work, discipline and call in replacement employees. The job description fur-

ther provides in part that staff nurses interview and participate in the hiring of CNA's and participate in performance evaluations.

At the beginning of each shift, the departing staff nurses brief the arriving staff nurses concerning what occurred on the prior shift. The arriving and departing nurses also count narcotics. The staff nurses determine which group within the rotation each CNA will work on a particular day. The director of nursing testified that the nurses take into account resident preferences and the skill level and experience of the CNA's in determining resident assignments. During the day shift, the scheduling coordinator and the nurse managers determine whether a CNA should be reassigned to cover for an absent CNA. During the evening and night shifts, the decision is made by the evening or night coordinator and the staff nurses. The CNA assignment sheets have pre-assigned duties listed for each group of CNA's. The staff nurses modify or add to the duties by making handwritten changes. The staff nurses spend the balance of their shifts monitoring the care given by the CNA's and providing direct patient care. CNA's are entitled to a lunch break and two 15-minute breaks in an eight-hour shift. Staff nurses determine the times that each group of CNA's takes their lunch breaks. The CNA's have to notify the staff nurses when they leave the floor for a break. Staff nurses have the authority to tell CNA's to delay their breaks if warranted by conditions on the floor. Staff nurses and CNA's are hourly-paid and punch the same time clock. All nurses, unlike the CNA's, have access to medical supplies and carts and have mailboxes.

The Employer employs one or two trained medication assistants (TMA's) and approximately 45 CNA's. The TMA's report to a nurse manager. The TMA's pass medications and also perform CNA duties. CNA's report to the staff nurse on duty. They are responsible for providing basic care to residents, including bathing, feeding, walking and transferring. They also perform non-care duties such as cleaning.

The Employer's staffing patterns are the same during the week and on weekends. On the day shift, there is one TMA and no staff nurse on the first floor; and two staff nurses and four CNA's on the second, third and fourth floors. On the evening shift, there is one CNA and no staff nurse employed on the first floor. There are two staff nurses and three to four CNA's on each of the remaining floors. On the night shift, there is a staff nurse and two CNA's on each of the third and fourth floors. Optimally, the second floor would be scheduled with a TMA. The nurses on these floors also monitor the first and second floors.

The director of nursing testified that there are biweekly nursing administration meetings that include the director of nursing, the assistant director of nursing, the nurse managers and, if she is on duty, the evening coordinator. However, a witness called by the Petitioner who worked as the evening coordinator from about September 1998 until February 1999 testified that she never attended these meetings.

The Employer has a progressive discipline policy that is set forth in its employee handbook. There are three groups of offenses (referred to as Class I, II and III). Each group lists non-exhaustive "examples" of offenses. Class I lists 11 examples, has five steps and culminates in discharge. Class II lists 20 examples, has three steps and culminates in discharge. Class III lists 17 examples for which an employee is subject to discharge. The director of nursing testified that the nurse managers, evening and night coordinators and the staff nurses have the authority to issue verbal and written discipline; and that they are informed of the existence of this authority during their orientation and annual reviews. The director of nursing also testified that staff nurses have the option of "doing nothing" with respect to issuing a verbal or written warning; that some staff nurses choose not to exercise their authority to discipline; and that staff nurses who choose not to discipline CNA's are not doing their jobs. However, there is no record evidence indicating that staff nurses have ever been disciplined because they failed to issue

verbal or written warnings to CNA's. The director of nursing further testified that only she and the assistant director of nursing have access to employee personnel files; that although the coordinators and staff nurses can write down what happened and whether, according to the employee handbook, the infraction is a Class I, II or III offense, they cannot determine whether a verbal or written warning or suspension or termination should be imposed; and that discipline cannot be imposed without the involvement of the administrator, the director of nursing or the assistant director of nursing. The director of nursing further testified that the coordinators and the staff nurses have the authority to send an employee home in response to a severe infraction but not to terminate the employee. The Employer's employee handbook provides for an internal appeal procedure that employees can utilize to challenge any disciplinary actions taken against them.

A witness called by the Petitioner testified that she worked from July 1998 until February 1999 as a staff nurse and evening coordinator; that she never initiated discipline against an employee; that on three occasions the assistant director of nursing gave her a disciplinary form and instructed her to give it to an employee; and that she then signed the disciplinary form and gave it to the employee.

The current night coordinator testified on behalf of the Petitioner that in early 1999 he attempted to initiate discipline against a staff nurse; that the assistant director of nursing told him that she would "fix it" and he should not "push this any farther"; and that to his knowledge the nurse was not subsequently disciplined. Several staff nurses testified on behalf of the Petitioner that they had never initiated discipline against CNA's.

A staff nurse testified on behalf of the Employer on rebuttal that she had initiated discipline on at least three occasions and did so without prior approval from anyone in management. The three warnings issued by the witness are a part of the record. In each instance, the witness



filled out a Disciplinary Action Report form describing an alleged disciplinary incident. The form contains boxes to check indicating the “Disciplinary action being taken”: The options are “First Notice,” “Second Notice,” “Final Notice,” “Discharge Warning” and “Discharge from employment.” None of the boxes are checked on any of the three forms. However, the director of nursing testified that a grievance was filed concerning one of these incidents. The record is silent as to the disposition of the grievance. Finally, the staff nurse testified without elaboration that she had initiated written and verbal discipline “many times” in addition to the three incidents described above.

The record contains an additional 12 reports of disciplinary incidents that are signed by staff nurses or a coordinator. Eight of the reports are from 1993 through 1995. Three of the reports are verbal warnings issued in 1998. One of them was issued by the assistant nurse manager, a stipulated supervisor. The final report is from 1999 and does not indicate what, if any, discipline was taken as a result.

The director of nursing testified that the evening and night coordinators and the staff nurses have the authority to resolve disputes among CNA’s. If they are unable to resolve the dispute, it is then taken to the nurse managers. The evening and night coordinators and the staff nurses also have the authority to complete a form that corrects inadvertent failures to punch in or out so that CNA’s receive proper pay for time worked. The forms are then given to the director of nursing or the assistant director of nursing for final approval.

The nurse managers evaluate the evening and night coordinators and staff nurses. The form used to evaluate staff nurses does not specifically address performance of supervisory duties. However, the record does contain staff nurse evaluations in which the subject is addressed. Representative comments include “[I]earn to direct [CNA’s] in a positive manner”; “[v]ery good at directing CNA’s”; “develop better techniques at directing CNA’s”; and “assume

more guidance over the CNA's. (Play a leadership role". One evaluation indicates that a staff nurse needed improvement in "[h]olding CNA's accountable"; and should strive to "[c]ontinue developing assertive supervisory skills." No one currently evaluates the CNA's. However, the director of nursing testified that she and the assistant director of nursing began to discuss having the evening and night coordinators and the staff nurses evaluate CNA's; and that she made the decision to have them do so on a date that is not disclosed by the record. The record does not disclose what role the evening and night coordinators and staff nurses will play in this regard; what role, if any, undisputed supervisors will play in reviewing the evaluations; or to what extent, if any, the evaluation process will affect the terms or conditions of employment of the CNA's. All nurses, unlike the CNA's, have access to medical supplies and carts and have mail-boxes.

On the basis of the foregoing and the record as a whole, I conclude that the registered and licensed practical nurses in the unit sought by the Petitioner are not supervisors within the meaning of the Act. Initially, and contrary to the Employer's contention in its post-hearing brief, I note that it is settled Board law, which is binding on me, that the party asserting supervisory status has the burden of persuasion on this issue. See, e.g., *Northern Montana Health Care*, 324 NLRB 752 (1997), enf'd. \_\_\_ F.3d \_\_\_, 161 LRRM 2469 (9th Cir. 1999). In concluding that the Employer has failed to satisfy this burden, I note that the Employer does not contend, and the record does not establish, that the registered and licensed practical nurses have the authority to hire, fire, transfer (other than on a temporary basis to meet patient care needs), lay off, recall, promote, or discharge or reward employees. Rather, the Employer contends in its post-hearing brief that its evening and night coordinators are supervisors within the meaning of the Act because they are the highest-ranking members of management present during the vast majority

of the time; and because they and other registered and licensed practical nurses have the authority to

(1) assign, direct and monitor the work of CNA's in response to staffing and patient care needs; (2) modify lunch and break schedules; (3) issue and recommend verbal and written discipline and suspend; (4) call in unscheduled CNA's to work and authorize overtime when needed to maintain adequate staffing; (5) adjust grievances; (6) complete payroll forms that correct time cards and record absences; and (7) allow CNA's to leave early. Finally, the Employer contends that supervisory authority is also demonstrated by the fact that all of its nurses, unlike its CNA's, have access to medications and supplies.

The record establishes, as contended by the Employer, that the evening and night coordinators are the highest-ranking persons present on two shifts during the week and on weekends. However, the record also establishes that the director of nursing and the assistant director of nursing are always available by telephone; and that the nurse managers are also available to answer questions that arise when they are off duty. In these circumstances, I conclude that the fact the nursing supervisors are nominally "in charge" of the facility during substantial periods of time is insufficient to establish supervisory status. *Beverly Enterprises v. NLRB*, 148 F.3d 1042, 1048; *Lakeview Health Center*, 308 NLRB 75, 79 (1992); *Waverly-Cedar Falls Health Care*, 297 NLRB 390, 393 (1989). My conclusions with respect to the Employer's remaining contentions follow.

(1) Assign, direct and monitor the work of CNA's. The record establishes that patient care plans are prepared by the nurse managers and mds coordinator. The evening and night coordinators, the staff nurses and CNA's are responsible for carrying out these plans. However, the record fails to establish that the coordinators and staff nurses exercise independent judgment and discretion in assigning duties to and directing and monitoring the work of the CNA's.

Rather, the record establishes that the CNA's have pre-assigned duties for each patient. Although the record establishes that the coordinators and staff nurses have the authority to modify or add to these assigned duties and that they direct and monitor the CNA's in their performance, the duties involve routine aspects of patient care such as bathing, feeding, walking and transferring patients and other routine tasks such as cleaning. The record also fails to establish that the coordinators and staff nurses exercise independent judgment and discretion in transferring CNA's. Rather, the record establishes that the scheduling coordinator initially establishes the days, hours and floors that nursing department employees work. The nurse managers establish the rotation for CNA's. The role of the evening and night coordinators is limited to temporarily transferring CNA's in response to patient care and staffing requirements. Accordingly, I conclude that the evening and night coordinators and staff nurses do not exercise supervisory authority in assigning, directing and monitoring the work of the CNA's. *NLRB v. Grancare, Inc.* 170 F.3d 662, 668 (7th Cir. 1998); *Beverly Enterprises v. NLRB*, 148 F.3d at 1047; *Northern Montana Health Care Center*, 324 NLRB at 753; *Providence Hospital*, 320 NLRB 717 (1996).

(2) Modify CNA's break and lunch schedules. The record establishes that the evening and night coordinators and staff nurses have the authority to monitor and modify the break and lunch schedules of certified nursing assistants. However, the record also establishes that they exercise such authority only in response to the necessities of patient care needs. This limited authority is routine in nature and does not require the exercise of independent judgment or discretion. It is therefore insufficient to constitute the exercise of supervisory authority. *Beverly Enterprises v. NLRB*, 148 F.3d at 1047; *Park View Manor*, 321 NLRB 477, 478 (1996); *Ten Broeck Commons*, 320 NLRB 806 (1996).

(3) Issue and recommend verbal and written discipline and suspend. The director of nursing testified that the evening and night coordinators have the authority to issue verbal and

written discipline to CNA's and to suspend them. However, the director of nursing also testified that only she and the assistant director of nursing have access to employee personnel files; that although other nurses could report what happened and determine what type of offense was involved, they could not determine what the appropriate penalty was for the infraction; and that no discipline could be imposed without the involvement of the administrator, the director of nursing or the assistant director of nursing. In these circumstances, I conclude that the role the coordinators and staff nurses play with respect to discipline is essentially reportorial in nature and is insufficient to confer supervisory status. This conclusion is consistent with the 15 reports of disciplinary incidents offered in evidence by the Employer. Eight of those reports are from 1993 through 1995 and are too remote in time to be probative of current authority to discipline. All of the remaining reports are either verbal warnings or fail to indicate what, if any, discipline was in fact imposed. Thus, the record fails to establish that the coordinators and staff nurses have the authority to issue discipline that independently results in adverse action to CNA's without further review by higher authority. *Beverly Enterprises v. NLRB*, 148 F.3d at 1046; *Washington Nursing Home*, 321 NLRB 366 fn.4 (1996). I also note that the director of nursing testified that at least some of the Employer's nurses choose not to exercise whatever disciplinary authority they have and that there is no record evidence indicating that they have been reprimanded as a result. This evidence suggests that the Employer has done nothing more than confer mere "paper authority" to discipline on its registered and licensed practical nurses. Finally, I note that the record establishes that on at least one occasion the night coordinator attempted to initiate discipline against another nurse and was directed by the assistant director of nursing not to pursue the matter further. This evidence is inconsistent with the contention that the coordinators have the independent authority to discipline. Accordingly, I conclude that the

record fails to establish that the coordinators and staff nurses have independent authority to discipline employees.

(4) Call in unscheduled CNA's to work and authorize overtime when needed to maintain adequate staffing. The record establishes that the evening and night coordinators have the authority to call in off-duty CNA's and to ask on-duty CNA's to work late even if doing so results in overtime pay. The coordinators can also decide to work "short." However, the record also establishes that the exercise of this authority is limited to situations in which additional staffing is necessary to ensure the continuity of patient care. The exercise of such limited authority does not involve independent judgment or discretion and is therefore insufficient to establish supervisory status. *Providence Alaska Health Care Center v. NLRB*, 121 F.3d 548, 555 (9th Cir. 1997); *Northern Montana Health Care*, 324 NLRB at 753 fn. 9; *Lakeview Health Center*, 308 NLRB 75, 78 (1992).

(5) Adjust grievances. The record establishes that the coordinators and staff nurses have the authority to resolve disputes among CNA's. However, the record also establishes that if the coordinators and staff nurses are unable to do so, the dispute is then taken up with the nurse managers. Moreover, there is no evidence that the coordinators and staff nurses play any role in administering grievances filed pursuant to the collective bargaining agreement. In these circumstances, I conclude that the record evidence is insufficient to establish that the coordinators and staff nurses have the authority to independently adjust grievances. *Northern Montana Health Care*, 324 NLRB at 754; *Riverchase Health Care Center*, 304 NLRB 861, 865 (1991).

(6) Complete payroll forms that correct time cards and record absences. The record establishes that the evening and night coordinators and staff nurses have the authority to complete a form that corrects time card errors; and that the form is then submitted to the director of nursing or assistant director of nursing for final approval. The record further establishes that the

coordinators report absences to the scheduling coordinator. The essentially ministerial, reportorial functions that the coordinators and staff nurses play in these regards are insufficient to establish supervisory status. *Washington Nursing Home*, 321 NLRB at 370.

(7) Allow CNA's to leave early. The record establishes that the evening and night coordinators have the authority to allow CNA's to leave early. This authority is routine in nature and is insufficient to establish supervisory status. *Washington Nursing Home*, 321 NLRB at 366 fn. 4.

In concluding that the evening and night coordinators and staff nurses are not supervisors within the meaning of the Act, I also note that a finding of supervisory status would result in an inordinately high ratio of supervisory to non-supervisory employees. If the Employer's contention that all of its registered and licensed practical nurses are supervisors is correct, there would be approximately 27 supervisors overseeing approximately 45 CNA's, a ratio of more than two supervisors for every non-supervisory employee. The parties stipulated to the supervisory status of seven individuals. If the remaining registered and licensed practical nurses are not supervisors, the resulting ratio is approximately one supervisor for every seven CNA's. *NLRB v. Grancare, Inc.*, 170 F.3d at 667; *Beverly Enterprises v. NLRB*, 148 F.3d at 1047.

Since I have concluded that the record fails to establish that the evening and night coordinators and staff nurses possess any of the primary indicia of supervisory status, I further conclude that it is unnecessary to consider such secondary indicia as access to medications and supplies. *Northern Montana Health Care Center v. NLRB*, \_\_\_ F.3d \_\_\_, 161 LRRM at 2473 fn. 6.

In its post-hearing brief, the Employer contends in a single sentence that the mds coordinator is a managerial employee but cites no record evidence in support of this contention. Having considered the record as a whole, I conclude that there is no evidentiary basis for con-

cluding that the mds coordinator formulates or effectuates management policies by expressing and making operative the decisions of her employer. *NLRB v. Yeshiva University*, 444 U.S. 672 (1980). Accordingly, I conclude that the mds coordinator is not a managerial employee. Since the mds coordinator is a nursing department employee and works in the same facility as the registered nurses sought by the Petitioner, and since there is no record evidence indicating that she has such a distinct community of interest as to require her exclusion from the unit, I will include her in the unit found appropriate herein.

6. Under Section 9(b)(1) of the Act, the Board is prohibited from including professional employees in a unit with employees who are not professionals, unless a majority of the professional employees vote for inclusion in such a unit. To carry out the statutory requirement, the Board has adopted a special type of self-determination procedure in such an election known as a Sonotone election. Under this procedure, a separate voting group encompassing all professionals would elect whether to constitute a separate appropriate bargaining unit or be included in the larger unit with non-professional employees. Accordingly, I find that all professional employees constitute a separate voting group which, depending on the outcome of the election, may constitute either a separate appropriate bargaining unit, or be included in the unit with the non-professional employees.

I, therefore, find that the following employees of the Employer may constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time registered nurses and licensed practical nurses employed by the Employer at its St. Paul, Minnesota facility; excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.



In order to ascertain the desires of the professional employees as to their inclusion in the unit with the non-professional employees, I shall direct separate elections in the following groups:

- (a) All full-time and regular part-time licensed practical nurses employed by the Employer at its St. Paul, Minnesota facility; excluding registered nurses, office clerical employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.
- (b) All full-time and regular part-time registered nurses employed by the Employer at its St. Paul, Minnesota facility; excluding licensed practical nurses, office clerical employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.

The employees in the non-professional voting group (a) will be polled to determine whether or not they wish to be represented by United Food and Commercial Workers Union, Local 789, AFL-CIO.

The employees in the professional voting group (b) will be asked two questions on their ballot:

- (1) Do you wish to be represented in a unit that includes the non-professional employees of Extendicare Health Facilities, Inc., d/b/a Galtier Center for the purposes of collective bargaining?
- (2) Do you desire to be represented for the purposes of collective bargaining by United Food and Commercial Workers Union, Local 789, AFL-CIO?

If a majority of the professional employees in voting group (b) vote “yes” to the first question, indicating their wish to be included in the unit with non-professional employees, they will be so included. Their votes on the second question will then be counted together with the votes of the non-professional voting group (a) to determine whether or not the employees in the combined professional and non-professional unit wish to be represented by United Food and Commercial Workers Union, Local 789, AFL-CIO. If, on the other hand, a majority of the professional employees in voting group (b) vote against such inclusion, they will not be included with the non-professional employees. Their votes on the second question will then be separately

counted to determine whether or not they wish to be represented by United Food and Commercial Workers Union, Local 789, AFL-CIO.

The unit determination is based, in part, on the results of the election among the professional employees. However, the following findings in regard to the appropriate unit are now made:

(1) If a majority of the professional employees vote for inclusion in the unit with the non-professional employees, I find that the following will constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time registered nurses and licensed practical nurses employed by the Employer at its St. Paul, Minnesota facility; excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.

(2) If a majority of the professional employees do not vote for inclusion in the unit with the non-professional employees, but do vote for representation apart from them, I find that the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

(a) All full-time and regular part-time licensed practical nurses employed by the Employer at its St. Paul, Minnesota facility; excluding registered nurses, office clerical employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.

(b) All full-time and regular part-time registered nurses employed by the Employer at its St. Paul, Minnesota facility; excluding licensed practical nurses, office clerical employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.

### **DIRECTION OF ELECTION**<sup>3</sup>

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<sup>3</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **July 8, 1999**.

An election by secret ballot will be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the date below,

including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>4</sup>

Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Food and Commercial Workers Union, Local 789, AFL-CIO.

Signed at Minneapolis, Minnesota, this 24th day of June, 1999.

/s/ Ronald M. Sharp

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Ronald M. Sharp, Regional Director  
Eighteenth Region  
National Labor Relations Board

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<sup>4</sup> To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that two copies of election eligibility lists in each unit containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the lists available to all parties to the election. In order to be timely filed, these lists must be received in the Minneapolis Regional Office, Suite 790, Towle Building, 330 Second Avenue South, Minneapolis, MN 55401-2221, on or before **July 1, 1999**. No extension of time to file these lists may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such lists. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.